



(b)(6)

**U.S. Citizenship  
and Immigration  
Services**

DATE: **OCT 03 2013**

Office: TEXAS SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

**ON BEHALF OF PETITIONER:**

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the immigrant visa petition. The petitioner filed a motion to reconsider, which the director dismissed. The petitioner appealed the matter to the Administrative Appeals Office (AAO). The AAO summarily dismissed the petitioner's appeal on January 29, 2013. The matter is now before the AAO on motion to reconsider. The motion will be dismissed, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on August 12, 2011, seeking classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a high school chemistry teacher. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director denied the petition on April 18, 2012, having found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The petitioner filed a motion to reconsider the director's decision on May 21, 2012, which the director dismissed on September 6, 2012, stating that it did not meet the requirements of such a motion. The petitioner appealed the director's dismissal of the motion to the AAO on September 27, 2012. On appeal, the petitioner disputed the elements of the director's April 18, 2012 denial decision. The matter on appeal, however, was not the director's April 18, 2012 denial of the petition, but the September 6, 2012 dismissal of the motion to reconsider. The arguments presented by counsel on appeal failed to overcome the director's September 6, 2012 dismissal of the motion. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v). Because counsel failed to identify specifically an erroneous conclusion of law or a statement of fact in the director's September 6, 2012 decision, the AAO concluded that counsel had not specified the required basis for the appeal and the appeal was summarily dismissed.

On motion, counsel disputes the correctness of the director's September 6, 2012 and April 18, 2012 decisions rather than contesting the AAO's appellate decision. However, the matter at issue with the current motion is not the director's earlier decisions, but rather the AAO's January 29, 2013 dismissal of the appeal. Regarding motions to reopen or reconsider, 8 C.F.R. § 103.5(a)(1)(ii) states in relevant part: "The official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction." The latest decision was the AAO's decision dismissing the appeal. Therefore, a review of any claims or assertions that the petitioner's present motion raises is limited in scope to the AAO's decision.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a

motion to reopen which seeks a new hearing based on new or previously unavailable evidence. See *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. See *Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the “additional legal arguments” that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Id.* Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

The petitioner has failed to present arguments relating to the grounds underlying the AAO’s most recent decision. The petitioner bears the burden of establishing that the AAO’s summary dismissal of the petitioner’s appeal was itself in error. If the petitioner can demonstrate that the AAO erred by summarily dismissing the appeal, then there would be grounds to reconsider the director’s earlier decisions. The petitioner has not done so in this proceeding. The petitioner has not established that the AAO’s appellate decision was based on an incorrect application of law or Service policy, or that the decision was incorrect based on the evidence of record. The petitioner has not claimed or shown that the AAO should not have summarily dismissed the appeal, and the AAO will not consider the petitioner’s arguments regarding the director’s decisions to deny the petition and to dismiss the motion. Therefore, the petitioner’s latest motion does not meet the requirements of a motion to reconsider, and must be dismissed. In addition, the motion does not contain the statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding as required by the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C). For this additional reason, the motion does not meet the regulatory requirement.

The regulation at 8 C.F.R. § 103.5(a)(4) states that “[a] motion that does not meet applicable requirements shall be dismissed.” Accordingly, the motion will be dismissed, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion to reconsider is dismissed, the AAO’s January 29, 2013 decision is affirmed, and the petition remains denied.